

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

ST.Rev..No. 329 of 2006()

TA.314/2003 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD. DT.28.4.2005

.....

REVISION PETITIONER/ASSESSEE/APPELLANT

**M/S.KWALITY VENEERS & BOARD PRODUCTS,
CHUNGAM, THIRUTHI ROAD, PAPPINISSERY P.O.,
KANNUR DISTRICT.**

**BY ADV. SRILE.P.GOVINDAN
SRI.A.J.ANTONY**

RESPONDENTS: REVENUE/RESPONDENT

**STATE OF KERALA,
REP. BY SECRETARY,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

**THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION
ON 03/10/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. No.329 of 2006
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Dated this the 3rd day of October, 2006.

JUDGMENT

Ramachandran Nair, J.

The question raised is whether the Tribunal was justified in sustaining assessment under Section 5A of the KGST Act on purchase turnover of raw materials purchased from exempted industrial units which are not liable to pay sales tax on their sales. We find from the order of the Tribunal that they have followed decision of this court in DY. COMMISSIONER OF SALES TAX V. C.T.KOCHOUSEPH (2005) 13 KTR 58 which is decided by this court based on earlier decision of this court in DY. COMMISSIONER OF SALES TAX V. SUPREME BOARDS (1998) 111 STC 305. Even though counsel for the petitioner contended that there is a distinction in this case because petitioner has issued Form 18 under Section 5(3) of the KGST Act against the purchases as the items are used as industrial raw materials, we do not know how petitioner issued Form 18 under Section 5(3) of the KGST Act because facility is available to the purchasers only to purchase goods at lower rate of tax at 3%. When supplier is not liable to pay tax and no sales tax is being charged on sales to the petitioner, there was no necessity for the petitioner to issue Form 18. In any case so long as the supplier is not liable to pay tax on the sales to the petitioner, the situation is squarely covered by Section 5A(1)(c) of the KGST Act. We, therefore, uphold the

order of the Tribunal and dismiss the revision case.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated